

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6015 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

MAE PASSAGLIA
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-281

FORMERLY BENEFIT DECISION No. 6015
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S.S.A. No.

HICKORY PIT
(Employer)
c/o Corporation Unemployment

Account No. .

The above-named employer on February 10, 1953, appealed from the decision of a Referee (SF-28640) which held that the employer's appeal from the determination and ruling of the Department of Employment was invalid because of failure without good cause to file such an appeal within the statutory period provided by Section 67(d) of the Act /now section 1328 of the Unemployment Insurance Code7.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately three years as a waitress by the employer and voluntarily left her work on September 28, 1952, for reasons hereinafter set forth.

On October 7, 1952, the claimant registered for work and filed a claim for benefits in the Hayward Office of the Department of Employment. On November 4, 1952, the Department in response to a timely protest made by the representative for the employer, issued and mailed to the employer a notice of determination which held that the claimant voluntarily left her most recent employment with good cause within the meaning of Section 58(a)(1) of the Act /now section 1256 of the code/ and a notice of ruling intended by the Department to reach the same conclusion under the provisions of Section 39.1 of the Act /now section 1032 of the code/. However, the notice of ruling was ambiguous in that the information appearing thereon indicated in one place that the claimant had voluntarily terminated her employment with the employer herein without good cause and in another place with good cause. The filing of an appeal from the determination and ruling was delayed by the representative for the employer in order that this ambiguity might be resolved. On December 22, 1952, an amended ruling clearing the ambiguity was issued by the Department and the appeal was filed on December 24, 1952.

During the course of her most recent employment the claimant resided in the community of San Lorenzo which is located approximately fifteen miles from her place of employment. The claimant's hours of employment were on a split shift basis, namely, from 10:15 a.m. to 2:00 p.m. and from 5:00 p.m. to 9:30 p.m., five days per week. By reason of the split shift and the total travel time from her home to the place of employment, the claimant was required to remain away from home about fifteen hours a day. For a considerable period of time the claimant had been accustomed to resting during the hours from 2:00 p.m. to 5:00 p.m. at the home of a fellow worker, since she was unable because of the distance to return to her home from her place of employment. However, approximately two or three months prior to September 28, 1952, the fellow employee was replaced and the claimant lost her place of rest between shifts. Thereafter, the claimant attempted to pass the time by knitting and remaining at the establishment of her employer. The claimant was forbidden to do so. The claimant voluntarily terminated her employment because it was too tiring to spend the three hours in walking about the streets of the city.

REASON FOR DECISION

With respect to the timeliness of the employer's appeal to a Referee, Section 67(d) of the Unemployment Insurance Act /now section 1328 of the code₇ provides as follows:

"The facts submitted by an employer pursuant to subsection (c) shall be considered and a determination made as to the eligibility of the claimant for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to subsection (c) and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination, whichever is the later; provided, that said 10 days may be extended for good cause."

Since the Department issued a ruling which on its face was ambiguous and the employer acted promptly to clear up the ambiguity, it is our opinion that the statutory period to appeal therefrom did not commence to run until the amended ruling was issued on December 22, 1952. The employer having filed a timely appeal, we will therefore consider the case on its merits.

Section 58 of the Unemployment Insurance Act /now section 1256 of the code₇ provides in part as follows:

"An individual shall be disqualified for benefits if:

"(1) He has left his most recent work voluntarily without good cause, if so found by the commission; . . ."

The claimant herein clearly left her work voluntarily and we need only consider whether or not she had good cause for so doing. In Benefit Decision No. 5686, this Appeals Board defined good cause for leaving employment as follows:

"If the facts disclose a real, substantial and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving within the meaning of Section 58(a)(1) of the Act."

In this case the evidence establishes that the claimant left her employment only because she did not have an opportunity to rest between shifts, namely, the period of three hours from 2:00 p.m. to 5:00 p.m. Considering the length of time the claimant was required to remain away from home, it is our opinion, that the claimant had real, substantial and compelling reasons for leaving her employment such as would cause a reasonable person genuinely desirous of retaining employment to take similar action. We conclude, therefore, that the claimant voluntarily left her work with good cause within the meaning of Sections 58(a)(1) /now section 12567 and 39.1 of the Act /now section 1030 of the code7, as the same test is applicable to both sections (Ruling Decision No. 1).

DECISION

The decision of the Referee is set aside. The claimant is held not subject to disqualification under the provisions of Section 58(a)(1) of the Act /now section 1256 of the code7. Any benefits paid to the claimant which are based upon wages earned from the employer prior to September 28, 1952, shall be chargeable under Section 39.1 of the Act /now section 1032 of the code7 to employer account number 08-7699.

Sacramento, California, April 9, 1953.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6015 is hereby designated as Precedent Decision No. P-B-281.

Sacramento, California, March 23, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT